



**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Wednesday the, 6th day of April 2022)

APPEAL No. 220/2019

(Old No. ATA.606(7)2015)

Appellant : M/s. Grandmas Food Products,
Jacob Tower, PB.No.31,
Muvattupuzha – 686 673

By Adv. P. Ramakrishnan

Respondent : The Assistant PF Commissioner
EPFO, Sub Regional Office,
Bhavishyanidhi Bhavan,
Kaloor, Kochi – 682 017

This case coming up for final hearing on 08.10.2021 and this Tribunal-cum-Labour Court on 06.04.2022 passed the following:

ORDER

Present Appeal is filed from order No. KR/KC/19173/Enf.III (5)/2013/16176 dated 06.02.2014 assessing dues under Section 7A of EPF and MP Act (hereinafter referred to as ‘the Act’) for the period from 03/2010 – 11/2012 on evaded wages and also non-enrolled employees. The total dues assessed is Rs. 6,55,343/-

(Rupees Six lakh fifty five thousand three hundred and forty three only).

2. The appellant is an establishment covered under the provisions of the Act. An Enforcement Officer of the respondent inspected the appellant establishment and submitted a report dated 14.12.2012 alleging non-enrolment of four employees. A true copy of the inspection report dated 14.12.2012 is produced and marked as Annexure A1. The appellant is summoned by the respondent under Sec 7A. The representative of the appellant attended the hearing and produced the records called for. The appellant was thereafter served the impugned order alleging non-employment of certain employees and non payment of contribution on evaded wages. A true copy of the impugned order dated 06.02.2014 is produced and marked as Annexure A2. The respondent authority considered the entire salary paid to the employees ignoring the excluded allowances. It is not clear as to how the respondent arrived at the amount. The determination is done even in case of employees drawing more than Rs. 6,500/- as basic. The appellant therefore preferred a review application under Sec 7B (1) of the Act. The appellant pointed out that the

non-enrolled employees were not working with the appellant establishment for the whole period. A copy of the review application is produced and marked as Annexure A3. By proceedings dated 10.11.2014, the respondent rejected the review application. A true copy of the order dated 27.03.2015 is produced and marked as Annexure A4. As per Sec 2(b) of the Act, Basic wages means all emoluments which are earned by the employee while on duty in accordance with the terms of employment. But the definition specifically exclude DA, HRA, Overtime allowance, Bonus, Commission and similar allowances payable to the employees. As per Sec 6 of the Act, contribution is required to be paid on Basic wages, DA, and Retaining allowance alone. Employees of the appellant establishment are paid Basic wages, HRA and Conveyance allowance. HRA and conveyance allowance are specifically excluded and therefore will not pay part of basic wages. Allowances form less than 30% of the total emoluments. The respondent ought to have excluded HRA and conveyance allowance from the assessment.

3. The respondent filed counter denying the above allegations. The appellant is an establishment covered under the

provisions of the Act, engaged in making jams and pickles. An Enforcement Officer of the respondent inspected the appellant establishment and reported that the compliance position of the appellant establishment is not satisfactory as there is under reporting of wages and all the eligible employees of the appellant were not enrolled to the fund. The respondent therefore initiated an enquiry under Sec 7A of the Act. A representative of the appellant attended the hearing. From the records produced by the appellant, the respondent authority noticed that the appellant failed to extend social security benefits to 14 security guards and four eligible employees. It was also noticed that three eligible employees were enrolled belatedly. The salary structure of the appellant comprised of Basic, HRA and Conveyance allowance with no component of DA. However provident fund was deducted and remitted only on basic wages. The dues reported by the Enforcement Officer was tallying with the records produced by the appellant establishment. The respondent authority therefore issued the impugned order. The review application filed under Sec 7B of the Act was rejected as no fresh evidence was produced by the appellant. As per Para 26 (1)(a) of EPF Scheme “every employee employed in or in connection with the work of a factory or other

establishment to which the Scheme applies other than the excluded employees shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment”. As per Sec 2(f) of the Act, employee means any person who is employed for wages in any kind of work, in or in connection with the work of the establishment and who gets his wages directly or indirectly from the employer and includes any person employed by or through a contractor. Sec 2(b) of the Act defines Basic wages, according to which, all emoluments which are earned by an employee while on duty in accordance with terms of contract of employment are Basic wages excluding certain allowances indicated in Sec 2(b)(ii) of the Act. In ***Gujarat Cypromet Limited Vs Assistant Provident Fund Commissioner***, 2004(103) FLR 908, the Hon’ble High Court of Gujarat held that the term basic wages as defined under Sec 2(b) of the Act includes all emoluments received by the employees under the headings of Medical allowance, Conveyance allowance and Lunch allowance and those allowance are to be considered for the purpose of calculating Provident Fund allowance.

4. The learned Counsel for the appellant raised two issues in this appeal. One is with regard to the assessment of dues in respect of 18 non-enrolled employees. The 2nd issue is with regard to the assessment of dues on allowances such as HRA and Conveyance allowance.

5. According to the learned Counsel for the appellant, the Enforcement Officer who inspected the appellant establishment reported non-enrolment of four employees. However in the impugned order, the respondent authority has assessed dues in respect of 18 employees. According to the learned Counsel for the respondent, the respondent authority during the course of the enquiry, found that in addition to the four non-enrolled employees, there are 14 Security guards not enrolled to the fund and therefore the respondent authority assessed the dues in respect of all the 18 employees including the 14 security guards. According to the learned Counsel, the assessment is done on the basis of the documents produced by the appellant and not on the report of the Enforcement Officer. Since there is no dispute regarding the eligibility to be enrolled or the assessment of dues in respect of 18

non-enrolled employees, I am not inclined to interfere with the assessment of dues in respect of 18 non-enrolled employees.

6. The 2nd issue is with regard to splitting up of wages by the appellant establishment there by evading the liability of provident fund contribution. According to the learned Counsel for the appellant, the appellant establishment is paying HRA and conveyance allowance to its employees and both these allowances will not attract provident fund deduction. According to the learned Counsel for the respondent, the appellant establishment is not paying any DA to its employees and the DA component is split into various allowances to escape the liability of remitting provident fund contribution on total wages. On a perusal of the impugned order, it is seen that the respondent authority while examining the definition of wages under Sec 2(b) has considered the exclusions under Sec 2(b)(ii) of the Act. While assessing the dues, he has included all the allowances including the allowances which are excluded as per the provisions of the Act.

7. The relevant provisions of the Act to decide the issue whether the conveyance allowance and special allowance paid to

the employees by the appellant will attract provident fund deduction are Sec 2(b) and Sec 6 of EPF & MP Act.

Section 2(b) : “basic wages” means all emoluments which are earned by an employee while on duty or (on leave or holidays with wages in either case) in accordance with the terms of contract of employment and which are paid or payable in cash to him, but does not include

1. Cash value of any food concession
2. Any Dearness Allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) HRA, overtime allowance, bonus, commission or any other similar allowances payable to the employee in respect of his employment or of work done in such employment.
3. Any present made by the employer.

Section 6 : Contributions and matters which may be provided for in Schemes. The contribution which shall be paid by the employer to the funds shall be 10% of the basic wages, Dearness Allowance and retaining allowances if any, for the time being payable to each of the employee whether employed by him directly

or by or through a contractor and the employees contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding 10% of his basic wages, Dearness Allowance, and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Section.

Provided that in its application to any establishment or class of establishment which the Central Govt, after making such enquiry as it deems fit, may, by notification in the official gazette specified, this Section shall be subject to the modification that for the words 10%, at both the places where they occur, the word 12% shall be substituted.

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the scheme may provide for rounding of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

Explanation 1. For the purpose of this Section Dearness Allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

The confusion regarding the exclusion of certain allowances from the definition of basic wages and inclusion of some of those allowances in Sec 6 of the Act was considered by the Hon'ble Supreme Court in ***Bridge & Roof Company Ltd Vs UOI***, (1963) 3 SCR 978. After elaborately considering all the issues involved, the Hon'ble Supreme Court held that on a combined reading of Sec 2(b) and Sec 6 where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages. Where the payment is available to be specially paid to those who avail the opportunity is not basic wages. The above dictum laid down by the Hon'ble Supreme Court was followed in ***Manipal Academy of Higher Education Vs RPFC***, 2008 (5) SCC 428. In a recent decision in ***RPFC, West Bengal Vs Vivekananda Vidya Mandir & Others***, AIR 2019 SC 1240 the Hon'ble Supreme Court reiterated the dictum laid down by the Hon'ble Supreme Court in ***Bridge & Roof Company Ltd*** case (Supra). In this case the Hon'ble Supreme Court was considering various appeals challenging the orders whether special allowance, travelling allowance, canteen allowance, lunch incentive and special allowance will form part of basic wages. The Hon'ble Supreme Court dismissed the challenge holding that the "wage structure

and components of salary have been examined on facts both by the authority and the appellate authority under the Act who have arrived at a factual conclusion that the allowances in question were essentially a part of basic wages camouflaged as part of an allowances so as to avoid deduction and contribution accordingly to the provident fund accounts of the employees. There is no occasion for us to interfere with the concurrent conclusion of facts. The appeal by the establishments are therefore merit no interference”.

8. In **Montage Enterprises Pvt Ltd Vs EPFO, Indoor**, 2011 LLR, 867 (MP.DB) the Division Bench of the Hon’ble High Court of Madhya Pradesh held that conveyance and special allowance will form part of basic wages. In **RPFC, West Bengal Vs Vivekananda Vidya Mandir**, 2005 LLR 399 (Calcutta .DB) the Division Bench of the Calcutta High Court held that the special allowance paid to the employees will form part of basic wages particularly because no dearness allowance is paid to its employees. This decision was later approved by the Hon’ble Supreme Court in **RPFC Vs Vivekananda Vidya Mandir** (Supra). In **Mangalore Ganesh Beedi Workers Vs APFC**, 2002 LIC 1578

(Karnat.HC) the Hon'ble High Court of Karnataka held that the special allowance paid to the employees will form part of basic wages as it has no nexus with the extra work produced by the workers. In ***Damodarvalley Corporation, Bokaro Vs UOI***, 2015 LIC 3524 (Jharkhand.HC) the Hon'ble High Court of Jharkhand held that special allowances paid to the employees will form part of basic wages. The Hon'ble High Court of Kerala also examined the above issue in a recent decision dt.15.10.2020, in the case of ***Employees Provident Fund Organisation Vs M.S.Raven Beck Solutions (India) Ltd***, W.P.(C) No.17507/2016. The Hon'ble High Court after examining the decisions of the Hon'ble Supreme Court on the subject held that the special allowances will form integral part of basic wages and as such the amount paid by way of these allowances to the employees by the establishment are liable to be included in basic wages for the purpose of deduction of provident fund. The Hon'ble High Court held that

“This makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance forms the integral part of basic wages and as such, the amount paid by way of these allowances to the employees by the

respondent-establishment were liable to be included in basic wages for the purpose of assessment and deduction towards contribution to the provident fund. Splitting of the pay of its employees by the respondent-establishment by classifying it as payable for uniform allowance, washing allowance, food allowance and travelling allowance certainly amounts to subterfuge intended to avoid payment of Provident Fund contribution by the respondent-establishment”.

Hence the law is now settled that all special allowances paid to the employees excluding those allowances specifically mentioned in Sec 2(b)(ii) of the Act will form part of basic wages, depending on facts and circumstances of each case.

9. It is seen that the allowances involved in this appeal are HRA and conveyance allowance. As already pointed out, HRA is specifically excluded under Sec 2(b)(ii) of the Act and therefore there is no justification for the respondent to include the same in the assessment of dues. In the impugned order, the respondent has cited two examples. The first example is that of Sibi John, whose total salary for the month of 03/2010 is Rs. 4500/-. The above salary is split into Rs. 3150/- as basic, Rs 850/- as HRA

and Rs.500/- as conveyance allowance. The appellant remitted contribution only on Rs. 3150/-. Similarly in the case of Sri. Manoj B, the salary for the month of 03/2010 is Rs. 4700/-. However his salary is split into Rs. 3300/- as basic and Rs. 900/- as HRA and Rs. 500/- as conveyance allowance. The appellant remitted contribution only on a basic salary of Rs. 3300/-. The respondent authority proceeded to assess the dues on total wages including HRA subject to the statutory limit of Rs.6500/-. As already pointed out the assessment of dues on HRA is in violation of the provisions and therefore cannot be sustained. For the reasons explained in the above paras, conveyance allowance will form part of basic wages, as the same is paid universally and uniformly to all the employees and the same is not paid as an incentive for excess production or for working beyond the normal work which he was otherwise required to put in.

10. Considering the facts, circumstances, pleadings, evidences and arguments in this appeal, the assessment of dues in respect of 18 non-enrolled employees is upheld. The assessment of dues in respect of conveyance allowance is also upheld. The

assessment of dues in respect of HRA cannot be sustained in view of the reasons stated above.

11. Hence the appeal is partially allowed, rejecting the assessment of dues in respect of House Rent Allowance. The assessment of dues in respect of 18 non-enrolled employees and the conveyance allowance is upheld. The matter is remitted back to the respondent authority to re-assess the dues on evaded wages after excluding the HRA component within a period of six months after issuing notice to the appellant. If the appellant fails to appear or produce the records called for, the respondent is at liberty to assess the dues according to law. The pre-deposit under Sec 70 made by the appellant as per the direction of this Tribunal shall be adjusted or refunded after finalisation of the enquiry.

Sd/-
(V.Vijaya Kumar)
Presiding Officer